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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,681	09/09/2003	Travis Hess	2949.2.137	2262
21552	7590	09/07/2004	EXAMINER	
MADSON & METCALF GATEWAY TOWER WEST SUITE 900 15 WEST SOUTH TEMPLE SALT LAKE CITY, UT 84101			PAPE, JOSEPH	
		ART UNIT		PAPER NUMBER
		3612		
DATE MAILED: 09/07/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/658,681	HESS ET AL
	Examiner Joseph D. Pape	Art Unit 3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 July 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
 4a) Of the above claim(s) 6-11, 21-28 and 34 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-5, 12-20 and 29-33 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 09 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/22/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 6-11, 21-28 and 34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/1/04.

Note that claims 6 and 21 have been withdrawn by the examiner because the recitation that the foot region is substantially perpendicular to the anchor plate does not apply to the elected species. Also, claim 8 has been withdrawn by the examiner because the recitation that the support foot includes an intermediate foot does not apply to the elected species. Note that claim 11 has been withdrawn because it depends from claim 9 which was withdrawn by applicant.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: It appears that reference numeral 80 used in Figure 2A does not appear in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid

abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Interpretation of Claims

3. Claims 17 and 30 recite that the support foot includes at least one mounting bore. Such feature does not appear in the non-elected species, therefore, for the purposes of treatment of these claims based upon prior art, it will be presumed that reference numeral 80 in Figure 2 is indicating such a mounting bore in the support foot. Applicant should clarify this confusion by responding to the drawing objection or other appropriate action in response to this Office action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2, 4, 16-20 and 29-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 2, 4 and 19, the recitation that the support foot is "substantially parallel to the direction of an impact is vague and indefinite in that the support foot has several portions including a curved portion which means that there are various directions that the support foot can be considered to extend. Applicant should specify in what way the support foot is considered to extend for comparison to an anticipated force. Further, as shown in elected Figure 2A, the force 86 does not appear to be "substantially parallel" to any portion of the support foot.

In claim 18, line 7, the phrase "extending from the translating arm" is vague and indefinite and it appears that such phrase should be changed to --extending from the flex region-- for clarity.

Regarding claims 16 and 17, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 12, and 18-20, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Enomoto et al.

See the attached marked up copy of Figure 2 of Enomoto et al. showing how the claimed features relate to the reference.

Enomoto et al. is considered to be capable of functioning to deform to absorb energy for the support foot to contact the anchor plate provided a great enough force is applied.

8. Claims 1, 15, 18, and 33, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Frost.

See the attached marked up copy of Figures 6 and 7 of Frost showing how the claimed features relate to the reference.

Frost is considered to be capable of functioning to deform to absorb energy for the support foot to contact the anchor plate provided a great enough force is applied.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 13-14 and 31-32, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Enomoto et al.

Enomoto et al. disclose the claimed invention including the energy absorber 27 being constructed of metal. Reference column 3, line 40.

Enomoto et al. do not disclose that the specific type of metal being used is aluminum or steel.

Section 2144.07 of the MPEP sets forth that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness.

See *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious).

It would have been obvious to one of obvious skill in the art at the time the invention was made to construct the metal energy absorber of Enomoto et al. from either steel or aluminum because such selection of a known metal to construct a prior art device made of metal is prima facie obvious in view of *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

12. Claims 16 and 29, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Frost in view of Mimura et al.

Frost discloses the claimed invention except for the anchor plate (or connector 55) being provided with mounting bores therein.

Mimura et al. disclose, in Figure 3, an energy absorber 28 being connected to a pillar element 24 by fasteners 41 extending through mounting bores in connector flanges of the energy absorber.

It would have been obvious to one of obvious skill in the art at the time the invention was made to connect the anchor plate (or connector 55) of Frost to the pillar element 16" with a fastener extending through a mounting bore in the

anchor plate as taught by Mimura et al. as an alternate, functionally equivalent connection arrangement.

Allowable Subject Matter

13. Claims 17 and 30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

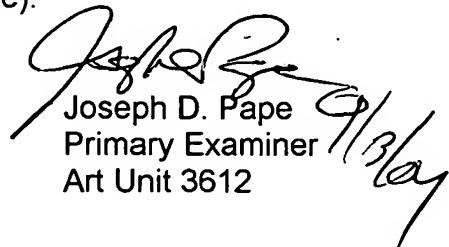
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references show other energy absorbing structures similar to that of the current invention.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (703) 308-3426. The examiner can normally be reached on Tues.-Fri. (6:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joseph D. Pape
Primary Examiner
Art Unit 3612

Jdp

August 27, 2004

FIG. 2

